

Internal Revenue Service

Number: **201314006**

Release Date: 4/5/2013

Index Number: 1362.04-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-128573-12

Date:

November 28, 2012

X =

Y =

Z =

State =

D1 =

D2 =

D3 =

Dear

This responds to a letter dated June 1, 2012, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code for an ineffective S corporation election and an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B)(ii).

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. On D2, X had an ineligible

shareholder Z. Therefore, X's S corporation election was ineffective on D2. X represents that upon discovery of its error, it took remedial action. X transferred the shares owned by Z to eligible S corporation shareholders on D3.

X represents that the circumstances resulting in X's ineffective S corporation election were inadvertent and not motivated by tax avoidance. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

On D2, X also owned the stock of Y. X represents that Y met the QSub requirements under § 1361(b)(3)(B) at all times since D2 except that X failed to make the election under § 1361(b)(3)(B)(ii) for Y. X also represents that X and its shareholders have filed income tax returns consistent with the treatment of X as an S corporation and Y as a QSub described in § 1361(b)(3)(B).

RULINGS REQUESTED

1. X requests a ruling under § 1362(f) that X will be treated as an S corporation beginning on D2 and thereafter.

2. X requests an extension of time under § 301.9100-3 to make a late QSub election effective D2 on behalf of Y under § 1361(b)(3)(B)(ii).

RULING 1

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S

corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective on D2, under § 1362(d)(2), because of the ownership of X stock by an ineligible S corporation shareholder. We also conclude that X's ineffective S election was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2, and thereafter, provided X's S corporation election was valid and was not otherwise terminated under § 1362(d).

RULING 2

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) prescribes the time and manner for making an election to be classified as a QSub.

Section 1361-3(a)(4) provides that an election to treat an eligible subsidiary as a QSub may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed. The proper form making the election is Form 8869, Qualified Subchapter S Subsidiary.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the

satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this ruling to file Form 8869 with the appropriate service center to treat Y as a QSub effective D2. A copy of this letter should be attached to the QSub election.

All of X's shareholders in determining their respective income tax liabilities must include pro rata their share of separately stated items of income (including tax-exempt income), loss, deduction, or credit, and nonseparately stated items of income or loss of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was a small business corporation under § 1361(b), or whether Y is a QSub within the meaning of § 1361(b)(3)(B).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Charlotte Chyr
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: